

IN THE MATTER OF : BEFORE THE

ABC CHILDCARE, INC. : HOWARD COUNTY

Petitioner : BOARD OF APPEALS

: HEARING EXAMINER

: BA Case No. 12-014C

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DECISION AND ORDER

On November 8, 2012, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the conditional use petition of ABC Childcare, Inc. (Petitioner) for a Day Care Child Center with up to 30 children in an RC: DEO (Rural Conservation: Density Exchange Option) zoning district pursuant to Section 131.N.13 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Christine Gesuele testified in support of the petition as an ABC Childcare, Inc. representative. No one appeared in opposition to the petition. At the outset of the hearing, Ms. Gesuele stated she concurred with the Technical Staff Report.

FINDINGS OF FACT

Based upon the Technical Staff Report, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located in the 4th Election District at the northeast quadrant of the St. Michaels and Hardy Roads intersection. It is referenced as Tax Map 7, Grid 3, Parcel 260, and is also known as 1125 St. Michaels Road (the Property).

2. Property Description. The 16.52-acre generally rectangular Property is the site of St. Michael's Roman Catholic Church, which consists of an approximately 65,000-square foot building generally located in the southwest portion of the site. The building comprises a 560-seat sanctuary, religious education classrooms, offices, a parish center/assembly hall, kitchen and library. A 244-space paved parking lot lies to the building's south and southwest. There are two driveway entrances onto St. Michaels Road and one onto Hardy Road. To the east of the parking area is a stormwater management pond.

3. Vicinal Properties. Adjacent properties are zoned RC-DEO. Parcel 62 across Hardy Road is a 241-acre farm encumbered with an agricultural preservation easement. Parcel 39, located at the southwest quadrant of the St. Michaels and Hardy Roads intersection, is owned by St. Michaels Catholic Church and is the site of a 19th century church building and cemetery. To the east, the four-lot Bridlewood subdivision is improved with single-family detached dwellings. Lot A to the Property's east side is encumbered with an agricultural preservation easement. The properties across St. Michael's Road are improved with single-family detached dwellings. Parcel 279, Lot 4, on the Property's north side, is improved with a single-family detached dwelling and various outbuildings.

4. Roads. St. Michael's Road has two travel lanes within a 60-foot right-of-way and a posted speed limit of 30 MPH. Hardy Road has two travel lanes within a 50-foot right-of-way

and a posted speed limit of 30 MPH. The estimated sight distance from the existing driveway entrance is more than 400 feet to the north and about 600 feet to the south.

5. Water and Sewer Service. The use will be served by private water and sewer.

6. General Plan. The Property is designated Rural West on the Designated Place Types Map of *PlanHoward 2030*. The *PlanHoward 2030* Functional Road Classification Map designates St. Michael's Road as a Minor Collector.

7. The Proposal. The Petitioner proposes to operate a child day care center for up to 30 children in the parish center portion of the building. The actual square footage will be determined by the state licensing agency. Outdoor play activities will occur within an existing fenced area located to the rear of the religious building and next to the parish center. Persons dropping off and picking up children will park in the existing parking lot and walk children into the building.

The day care center would operate only on holidays and during school closings between August and June (the school year). Proposed hours of operation are 6:45 a.m. through 6:30 p.m., Monday through Friday. A maximum of four employees on-site at any time is proposed.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Hearing Examiner concludes as follows:

II. General Criteria for Conditional Uses (Section 131.B)

A. **Harmony with the General Plan**. Section 131.B.1 requires the Hearing Examiner to evaluate whether the proposed modification of the approved conditional use plan will be in

harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

- a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and
- b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

PlanHoward 2030 designates the area in which the Property is located as "Rural West."

The 16.52-acre Property will support the proposed use. Existing driveways will accommodate the traffic associated with the use. The use will be conducted indoors, except for limited outdoor use in a fenced area some distance from area residential uses. The use will be combined with existing religious uses. Given the distance of the proposed use from area residences, the overall scale and intensity of uses is appropriate.

B. Adverse Impacts. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria": (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (4) access.

The assessment of a proposed conditional use under these criteria recognizes the potential for adverse impact from virtually every human activity. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed use would have adverse effects

in an RC-DEO district. The proper question is whether those inherent adverse effects are greater at the proposed site than they would be generally elsewhere within the RC-DEO district. *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, the Petitioner has met its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a Day Care Use in the RC-DEO district.

a. Physical Conditions. The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The predominately-indoor institutional use will not generate inordinate noise, dust, fumes, odors, lighting vibrations, hazards or other physical conditions. Outdoor activities will occur periodically in a fenced area and there is no evidence that the outdoor use would generate atypical physical impacts.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The location, nature and height of the existing structure intended to be used for the day care center is such that the use will not have a greater adverse impact on adjacent land and uses. The outdoor play area will not be visible from the road and will be buffered from adjacent residential properties by distance.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

Based on the 6,000-sq.ft. size of the parish hall, and a requirement of three parking spaces per 1,000-sq. ft., 18 parking spaces are required. The conditional use plan depicts 15 spaces for the use. Since the day care center would not operate at the same time as most other activities, the existing parking lot will accommodate additional parking spaces if needed.

d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

Existing drives will likely continue to provide safe access with adequate sight distance.

III. Specific Criteria for Child Day Care Centers and Nursery Schools, Day Treatment and Care Facilities (Section 131.N.13)

a. On-site circulation and parking areas shall be designed to minimize vehicular/pedestrian conflicts and to provide safe areas for dropping off and picking up passengers.

Persons dropping off and picking up children will park in the existing parking lot and walk children into the building. The existing parking lot will provide a safe area for dropping off and picking up passengers on those days when most other uses are not operating, in accordance with Section 131.N. 13.a.

b. For child day care centers or nursery schools in industrial or commercial districts, outdoor play areas shall be fenced, screened and located to minimize exposure to noise and other emissions from roads, parking areas, and industrial activities.

This section does not apply.

c. The minimum lot size for child day care centers shall be 500 gross square feet of lot area per child.

No more than 30 children will attend the Day Care Use, resulting in a minimum lot size of 15,000-square feet. The Property is 16.5 acres. The petition accords with Section 131.N. 13.c.

d. Outdoor play areas or activity areas shall be fenced, located to the side or rear of the principal structure, and buffered from adjoining residential properties by landscaping or adequate distance or both.

The outdoor play area will be located in an existing fenced area in the side yard of the religious education building, about 300 feet from the north lot line. The outdoor play area will be buffered by adequate distance, in accordance with Section 131.N. 13.d.

e. Parking areas shall be located and landscaped to minimize their visibility from roads and adjacent residential properties.

The existing parking area is appropriately located and landscaped to minimize visibility from roads and adjacent residential properties, in accordance with Section 131.N. 13.e.

f. The design and massing of proposed structures or additions to existing structures shall be generally compatible in scale and character with residential properties in the vicinity of the site, as demonstrated by architectural elevations or renderings submitted with the petition. Additional setbacks from property lines and landscape buffering shall be required if necessary to make the appearance of the site compatible with surrounding residential properties.

No additions or new structures are proposed. Section 131.N.13.f does not apply.

g. For facilities in residential districts with a capacity of more than 30 children or adult clients at one time, the following standards apply:

(1) The site has frontage on and direct access to a collector or arterial road designated in the General Plan, except that expansions of a conditional use that was approved prior to the effective date of Council Bill No. 11-2001 are permitted.

(2) Buildings, parking areas and outdoor activity areas will be at least 50 feet from adjoining residentially-zoned properties other than public road right-of-ways.

The Hearing Authority may reduce this setback to no less than 20 feet or the minimum setback required by the zoning district, whichever is greater, if:

(a) The adjoining land is committed to a long term institutional or open space use that provides an equivalent or better buffer for vicinal residential development; or (b) The petition includes detailed plans for screening, consisting of a combination of a solid fence or wall and landscaping, or an equivalent combination, that presents an attractive and effective buffer for neighboring residential properties.

(3) At least 20 percent of the area within the building envelope shall be green space, not used for buildings, parking area or driveways. The building envelope is formed by the required structure setbacks from property lines and public street rights-of-way.

Section 131.N.13.g does not apply.

ORDER

Based upon the foregoing, it is this 15th day November 2012, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the conditional use petition of ABC Childcare, Inc. for a Day Care Child Center with up to 30 children in an RC:DEO (Rural Conservation: Density Exchange Option) zoning district, is hereby **GRANTED;**

Provided, however, that:

1. The conditional use shall be conducted in conformance with and shall apply only to the Day Care Center as described in the petition as depicted on the conditional use plan submitted on September 24, 2012, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.